



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**JOHN BEN SHEPPERD
ATTORNEY GENERAL**

July 9, 1953

Hon. Robert S. Calvert
Comptroller of Public Accounts
Capitol Station
Austin, Texas

Opinion No. S-64

Re: Validity of the
appropriations in
House Bill 39, Acts
53rd Legislature,
1953, relating to
motor vehicle in-
spection, in the
absence of certifi-
cation by the Comp-
troller under Sec.
49a, Art. III, Con-
stitution of Texas.

Dear Sir:

You have requested the opinion of this office on whether the appropriations made in House Bill 39, Acts of the 53rd Legislature, are "of such a nature as to require the certificate of the Comptroller provided for in Section 49a of Article III of the State Constitution."

House Bill 39 amends the sections of the Uniform Act Regulating Traffic on Highways (Art. 6701d, V.C.S.) which deal with inspection of vehicles and which are usually referred to as the Motor Vehicle Inspection Law. Although enacted as a general law, the bill contains two appropriations which are effective for a period of two years if they are otherwise valid. Your question relates to their validity in the light of Section 49a of Article III of the Constitution, which reads in part as follows:

"From and after January 1, 1945, save in the case of emergency and imperative public necessity and with a four-fifths vote of the total membership of each House, no appropriation in excess of the cash and anticipated revenue of the funds from which such appropriation is to be made shall be valid. From and after January 1, 1945, no bill containing an appropriation shall be considered

as passed or be sent to the Governor for consideration until and unless the Comptroller of Public Accounts endorses his certificate thereon showing that the amount appropriated is within the amount estimated to be available in the affected funds."

The effect of the failure to obtain the Comptroller's certification on House Bill 39 must be considered from the standpoint of three separate appropriations, namely:

(1) The appropriation contained in House Bill 111, Acts 53rd Leg. (General Appropriation Act) for administration of the Motor Vehicle Inspection Division of the Department of Public Safety during the biennium beginning September 1, 1953.

(2) The appropriation in Section 3 of House Bill 39 for supplementation of salaries of certain employees of the Department of Public Safety and employment of additional patrolmen.

(3) The appropriation contained in Section 6 of House Bill 39 for refunds on unissued inspection certificates.

The Motor Vehicle Inspection Law, as enacted by Chapter 141, Acts of the 52nd Legislature, 1951 (amending Secs. 140-142, Art. 6701d, V.C.S.) created the Motor Vehicle Inspection Fund and allocated the moneys in the Fund for use in the administration of the law. Subdivision (a) of Section 141. Subdivision (g) of Section 140 authorized the appointment and compensation of officers and employees to carry out the provisions of the section "within the amounts made available by appropriation." The amounts appropriated for this purpose for the biennium beginning September 1, 1953, are fixed by the General Appropriation Act at \$432,480 for the year ending August 31, 1954, and at \$421,680 for the year ending August 31, 1955. H.B. 111, Acts 53rd Leg. House Bill 111 was passed on April 14, 1953, was duly certified by the Comptroller as within the available revenues, and was approved by the Governor on April 29, 1953. All of this occurred prior to the enactment of House Bill 39.

Immediately following the provision creating the Motor Vehicle Inspection Fund and allocating it for administrative expenses, Subdivision (a) of Section 141, Article 6701d, as amended in Section 3 of House Bill 39,

contains the following new provision:

" . . . Provided, however, that any balance remaining in such fund which is determined at any time by the Public Safety Commission to be in excess of the amount required for the administration of this Act may be used by, and is hereby appropriated to, the Texas Department of Public Safety, to be used as follows: . . ."

The purposes then set out in the statute are (1) supplementation of salaries of certain classes of employees and (2) employment of additional highway patrolmen.

While not effective as a continuing appropriation, this is an appropriation for two years. The section appropriates the balance over and above other amounts appropriated from the Motor Vehicle Inspection Fund. If no balance exists, nothing is appropriated; if a balance does exist, that and no more is appropriated. The only action which the Comptroller could possibly have taken if House Bill 39 had been sent to him for certification would have been to certify that the amount appropriated in this section was within the anticipated revenue. We think this appropriation falls within the purview of Attorney General's Opinion O-6626 (1945), which held that an appropriation of all the money coming into a specific fund, without stating any specific amount, did not have to be certified, since the amount appropriated could not possibly exceed the available revenue.

Coming to the appropriation contained in Section 6 of House Bill 39, this appropriation reads:

"As much of the Motor Vehicle Inspection Fund as may be necessary is hereby appropriated and set aside to pay refunds as provided by law."

Under the Motor Vehicle Inspection Law prior to amendment by House Bill 39 (as it existed at the time House Bill 111 was certified), the Department of Public Safety furnished blank inspection certificates to the inspection stations, and upon issuance the inspection station remitted to the Department of Public Safety for each certificate issued by it 25 cents of the \$1.00 fee paid by the vehicle owner. An amendment made in House

Bill 39 permits the Department of Public Safety to require each inspection station to make an advance payment of 25 cents on each certificate blank furnished to it, and the inspection station is entitled to a refund on all unissued certificate blanks which it later returns to the Department. The appropriation in Section 6 is for paying these refunds.

This change in procedure will not affect the ultimate amount of revenue derived under the Motor Vehicle Inspection Law. For every refund which is made, there must have been a prior payment into the Motor Vehicle Inspection Fund which would not have been made under the old procedure. At the time House Bill 39 was passed, there was no way of estimating how much of the money which may be deposited in the Fund as advance payments will be paid out in the form of refunds. However, the amount cannot be greater than the increase in deposits over the amount which the State would receive if its portion of the inspection fee was remitted after the certificate was issued. For each refund there would have to be a corresponding prepayment. If House Bill 39 had been submitted to the Comptroller for certification, the only action he could have taken would have been to certify that funds for paying this appropriation would be available. In keeping with the import of the holding in Opinion O-6626, we are of the opinion that certification is not necessary under these circumstances.

SUMMARY

Section 49a of Article III, Constitution of Texas, does not require submission of an appropriation bill to the Comptroller for certification if the nature of the appropriation is such that the only action the Comptroller could take would be to certify that the amount appropriated is within the amount estimated to be available in the affected funds. The appropriations in House Bill 39, Acts 53rd Legislature (Motor Vehicle Inspection Law) for additional salary payments out of the balance remaining in the Motor Vehicle Inspection Fund and for payment of refunds on unissued inspection certificates are of

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this nature.

Yours very truly,

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